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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 17 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing	)	
Television Broadcasting	)	
	)	
Television Satellite Stations	)	MM Docket No. 87-8
Review of Policies and Rules	)	
	)	
Policies and Rules Regarding	)	MM Docket Nos. 94-149
Minority and Female	)	and 91-140
Ownership of Mass Media	)	
Facilities	)	
	)	
Review of the Commission's	)	MM Docket No. 94-150
Regulations Governing	)	
Attribution of Broadcast	)	
Interests	)	
	)	
Review of the Commission's	)	MM Docket No. 92-51
Regulations and Policies	)	
Affecting Investment in the	)	
Broadcast Industry	)	
	)	
Reexamination of the	)	MM Docket No. 87-154
Commission's Cross-Interest	)	
Policy	)	

COMMENTS

NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS

## **SUMMARY**

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits its Comments in the above-captioned proceedings. NABOB submits that the Commission's decisions in these proceedings must further its statutorily mandated obligation to promote a diversity of viewpoints through assuring a diversity of ownership of the nation's communications industry, particularly including ownership by minority owned businesses. In order to further this obligation, the Commission should, at a minimum, leave intact its current television multiple ownership rules and its attribution rules and should not make any changes to dilute the diversity of ownership these rules were adopted to protect.

The Commission should promote minority ownership within the nation's communications industry by filling the void created by the loss of the Commission's tax certificate policy. To promote this statutorily mandated goal, the Commission should conduct an empirical study of minority ownership in the communications industry and should adopt each of the new policies proposed in these Comments.

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## COMMENTS

### NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits its Comments in the above-captioned proceedings. (The proceedings are collectively referred to herein as the "NPRMs" -- MM Docket Nos. 91-221, and 87-8 are jointly referred to as the "Television Ownership NPRM;" MM Docket Nos. 94-149 and 91-140 are jointly referred to as the "Minority Ownership NPRM;" and MM Docket Nos. 94-150, 92-51 and 87-154 are jointly referred to as the "Attribution NPRM")

NABOB submits that the Commission's decisions in these proceedings must be guided by its statutory obligation to promote diversity of viewpoints through diversity of ownership of the nation's communications industry. In general, this requires that the Commission make no changes in its television multiple ownership rules or its attribution rules. It also requires that the Commission adopt new policies to promote minority ownership to fill the void left by the loss of the tax certificate policy. In support of its position, NABOB submits the following:

#### **I. NABOB HAS A SUBSTANTIAL INTEREST IN THIS PROCEEDING**

NABOB is the trade association representing the interests of the African American owned commercial television and radio stations

and cable television systems throughout the United States. In that capacity, NABOB has two principal objectives: (1) to increase the number of African American owners of communications facilities and (2) to improve the business climate in which African American owned communications facilities operate. The issues raised in the NPRMs are fundamental to the interests of NABOB's members.

Congress and the United States Supreme Court have recognized for many years that there are important First Amendment reasons for promoting the ownership and control of communications facilities by minorities. See Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 560-563 (1990). In addition, Congress and the Supreme Court have separately recognized that, to remedy past discrimination, minorities must be given assistance in obtaining economic opportunities in our society. This second objective has been recognized by Congress in connection with a number of legislative actions in which no First Amendment issues were involved. See Fullilove v. Klutnick, 448 U.S. 449 (1980). NABOB submits, therefore, that it has clear standing and that its comments presented herein should be given substantial consideration by the Commission in these NPRMs. See United Church of Christ v. FCC, 359 F.2d 994, 1005, 53 RR2d 2001, 2013-2014 (D.C. Cir. 1966); Michael

Matheson et al., 53 RR2d 997, 998 (1983); and Baltimore Area Renewals, 89 FCC 2d 1183, 51 RR2d 727 (1982).

The need for Commission policies to promote minority ownership has been documented in numerous studies. See Minority Ownership NPRM at 2-5, 8-9. The effort to document that need has been significantly advanced by a recent study prepared by the National Telecommunications and Information Administration ("NTIA"). Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industries, U.S. Department of Commerce, NTIA, Office of Policy Analysis and Development, April, 1995 (the "NTIA Study"). The NTIA Study reports that:

1. Average gross receipts for all minority businesses in 1987 were \$64,132; what was thirty-four percent (34%) of the \$189,000 averaged by firms owned by white males. NTIA Study at 6.
2. Minorities comprise approximately twenty-five percent (25%) of the U.S. population, but minority firms represent only nine percent (9%) of U.S. businesses. Id.
3. African Americans constitute twelve percent (12%) of the U.S. population, but African American firms represent only three and one-tenth percent (3.1%) of U.S. businesses. Id.
4. The number of African American owned companies listed in the Black Enterprise magazine list of the 100 largest African American owned companies decreased from 33 in 1992 to 29 in 1993 and 28 in 1994. In addition, the number of persons employed by those companies decreased from 10,821 in 1992 to

10,076 in 1993 and 10,007 in 1994. NTIA Study at 8.

5. African Americans own only 193 commercial broadcast stations, representing only one and seven-tenths percent (1.7%) of the total in the U.S. Id. at 9.
6. Banks provide White borrowers with \$1.83 in debt for each dollar of equity capital they invest in their businesses, but African American borrowers receive only \$1.16 for each dollar of equity capital invested. Researchers have concluded that "banks treat Black and White loan recipients differently, even when their qualifications do not differ." Id. at 15.

Thus, the Commission can rely upon this significant new study by NTIA as additional evidence of the need for governmental action to promote minority business opportunities in the telecommunications industry.

## **II. THE COMMISSION HAS A STATUTORY OBLIGATION TO CONTINUE TO PROMOTE MINORITY OWNERSHIP**

Before commenting on the specific issues raised by the NPRMs, NABOB submits that the Commission's analysis in this proceeding must begin with the recognition that, in spite of the political changes which have taken place since the NPRMs were released, the Commission continues to have a statutory obligation to promote minority ownership. Since the release of the NPRMs the basic concepts underlying the NPRMs have been attacked by members of the new Congress who use "affirmative action" in the same way that

McCarthy used "red baiting." The first policy to fall victim was the tax certificate. On April 11, 1995, President Clinton signed into law legislation that, inter alia, repealed Section 1071 of the Internal Revenue Code, which provided the legal basis for the Commission's minority tax certificate policy.

The elimination of the tax certificate policy radically limits the options available to the Commission in this proceeding. As the Commission recognized in the Minority Ownership NPRM, the tax certificate policy was the Commission's most successful program for promoting minority ownership for the past seventeen years. Minority Ownership NPRM at 18. The NPRM spent 4 pages discussing possible revisions to the tax certificate policy to enhance opportunities for minority ownership. That portion of the NPRM has now been rendered moot.

Moreover, the repeal of the tax certificate policy has emboldened the communications "militias" who have historically objected to all pro-diversity efforts by the Commission. Some of the members of Congress who orchestrated the repeal of the tax certificate policy have expressed an intent to repeal all policies which even appear to be affirmative action programs. These attacks are obviously intended to intimidate the Commission to abandon its statutory obligation to promote minority ownership. The Commission



must not bow to such intimidation. The Commission must carry out its statutory obligation to promote minority ownership regardless of criticism and harassment from those who seek to turn back the clock on the promotion of minority ownership.

**III. THE COMMISSION MUST TREAT DIVERSITY OF OWNERSHIP AS THE  
OVERRIDING POLICY TO BE PROMOTED IN THIS PROCEEDING**

The Commission has posed numerous questions in the NPRMs. The answers to these questions can only be found by beginning with an overriding principle and seeking answers which are consistent with that principle. NABOB submits that diversity of ownership is the overriding principle upon which the Commission has and should continue to premise its approach to its various ownership policies. Essentially, the policy of diversity of ownership stems from Commission recognition that a diverse number of voices controlling news and editorial content in each of the mass media services is the only means of protecting the First Amendment right of freedom of speech for all Americans.

The NPRMs note that there are those who have asserted that a diversity of formats of radio, and a diversity of selections of television entertainment programming, can be promoted through a single owner. See Television Ownership NPRM at 7. However, this flawed analysis totally ignores the fundamental purpose of the

diversity of ownership policy. Diversity of ownership is necessary to assure that no person controlling the news and editorial policy of mass media facilities is able to exert undue control over the public airways. See Television Ownership NPRM at 4. Such a fundamental national interest cannot be delegated to a handful of companies, who, by virtue of their economic positions, would be given carte blanche to present only their personal version of the news. The Commission must protect the First Amendment with rules, not by hoping that a handful of dominant licensees will voluntarily accomplish its objectives.

**IV. THE COMMISSION SHOULD CONDUCT AN EMPIRICAL STUDY OF  
MINORITY OWNERSHIP IN THE COMMUNICATIONS INDUSTRY**

The Commission has requested that commenters in this proceeding provide empirical data on the status of minority ownership in the communications industry. NABOB submits that the Commission should not rely only on the comments of external parties to produce such empirical data. The Commission's minority ownership policies are under very serious attack from certain members of Congress. It is imperative that the Commission internally develop an extensive record to support the continuation and expansion of its policies.

Faced with the Congressional attack on its tax certificate policies, the Commission attempted to respond to its inquisitors with a woefully incomplete record on the operation and success of the tax certificate policy over its seventeen year existence. It is quite likely that the Commission will soon be required to provide a similar record to justify its other minority ownership policies and any expansion of those policies. Congress is unlikely to give significant weight to a record prepared by an organization outside the Commission, particularly if that organization is an advocacy organization on behalf of minority ownership.

Therefore, the Commission should initiate a thorough study of minority ownership. Such a study should be designed to obtain the following information:

1. All minority controlled communications licensees in all commercial services.
2. When each license was acquired.
3. Whether any of the Commission's minority ownership policies were used by the licensee in acquiring the facility.
4. What sources of financing the licensee used in acquiring the facility.
5. What barriers to entry the licensee encountered in acquiring the facility.

NABOB submits that a failure by the Commission to conduct such a study will leave the remaining minority ownership policies, as well as those which might be adopted in this proceeding, vulnerable to another fatal attack similar to the one launched upon the tax certificate policy.

**V. THE PROMOTION OF DIVERSITY OF OWNERSHIP REQUIRES THAT THE COMMISSION NOT RELAX ITS MULTIPLE OWNERSHIP RULES**

The Commission is being asked to adopt policies in the NPRMs which will increase the concentration of control of communications facilities and thereby reduce the diversity of ownership of broadcast facilities. It is not possible for the Commission to both increase concentration of ownership and diversify the voices controlling communications facilities. Therefore, the Commission must make a choice in this proceeding. NABOB submits that the choice must be to preserve diversity of ownership and not to increase the concentration of ownership of the communications industry.

NABOB submits that the following specific proposals should be adopted to support the overriding policy of preserving diversity of ownership:

1. Adopt an incubator program as previously proposed by NABOB/NBMC and NBA. In the Minority Ownership NPRM, the Commission

pointed out that NABOB/NBMC/NBA previously commented that the incubator program, as originally proposed by the Commission, needed to be substantially revised to be effective in promoting minority ownership. Minority Ownership NPRM at 12-13. The Commission has proposed to revise the incubator program to reflect the suggestions from NABOB/NBMC/NBA. Id. NABOB supports the incubator program as now proposed by the Commission, including the proposal that a company conducting an incubator program would be allowed to immediately receive a one station waiver of the Commission's national multiple ownership rule limits for each station it successfully helps become minority owned, provided the station incubated is of a value nearly comparable to the station acquired by the company sponsoring the incubator program. Id. at 14. However, we do not support the concept of allowing waivers of the local ownership rules in exchange for successfully incubating a minority owned station, because concentration of control in local markets is a much more serious problem than it is on a national level.

2. Make No Change in the Commission's Attribution Rules.

The Commission's rules are sufficiently flexible to allow minority owners to attract investors into a minority controlled company. The further relaxation of the Commission's attribution rules could

invite criticism of the policy as one in which minority "fronts" might be used to take advantage of potential minority ownership policy benefits. While this has been a very limited actual concern in the Commission's licensing policies, one or two alleged instances of such transactions were widely relied upon by Congress as justification for repealing the tax certificate policy. Any potential benefits of further relaxation of the attribution rules would appear to be outweighed by the need to avoid adding to the storm of Congressional criticism which has been rained down upon the misperceived abuses of the Commission's policies.

3. Recommend that Congress create an investment tax credit for investors in minority owned companies. The Commission's proposal for providing a current year tax credit for investors in minority-controlled companies, appears to have little chance for passage in the current Congress. Nevertheless, the Commission should go on record in support of the concept. The current Congress will not last forever. A recommendation by the Commission that such a policy is in the public interest can be relied upon in presentations by NABOB and others to a future Congress. Therefore, NABOB urges the Commission to go on record in support of such a tax provision.

4. Permit Minority Owned Companies to Create Local Triopolies. NABOB supports the Commission's proposal to allow the creation of local triopolies. Minority Ownership NPRM at 21. The Commission has already allowed a major concentration of ownership in the radio industry by allowing the largest AM and FM stations in most markets to enter into AM-AM and FM-FM duopolies. The Commission's proposal to allow 3 AM stations or 3 Class A FM stations to be owned or controlled by a single minority entity might help in allowing minority owners of AM stations or small Class A FM facilities to compete with dominant FM station duopolies.

5. Revise the FCC Form 323 Annual Ownership Report to Require Racial Information on Owners. NABOB supports the proposed revision to Form 323. As noted above, the amount of information the Commission can provide to support the need for continuing its minority ownership policies has become crucial. The collection of the proposed ownership information on the Form 323 should be a part of a larger effort by the Commission to collect the information listed above on minority ownership.

#### VI. TV OWNERSHIP NPRM

Applying the above stated principle of preserving diversity of ownership, NABOB submits that no changes should be made in the

Commission's television ownership proceeding. Any further consolidation in the ownership of the television industry will make it even more difficult for existing minority owners to compete with large group owners, and will make it harder for prospective minority purchasers to enter the industry. Moreover, among the three multiple ownership rules under consideration, it is particularly important to preserve the local ownership rule, and the radio-television cross-ownership rule, both of which protect competition on the local level. The Commission, therefore, should not allow the creation of television duopolies or LMAs, and should not alter its rules on the creation of radio-television cross-ownerships beyond those currently allowed.

#### **VII. ATTRIBUTION NPRM**

NABOB's comments above, proposing no change in the Commission's attribution rules to promote minority ownership, also apply to the general attribution rulemaking. Any relaxation of the attribution rules will allow an increase in the concentration of control of the industry. As stated above, an increase in concentration of control of the industry works against diversity of viewpoints and works against minority ownership. Therefore, NABOB proposes no change in the Commission's attribution rules.



**VIII.      ADDITIONAL PROPOSALS**

NABOB submits the following additional proposals for consideration by the Commission in these proceedings:

The Commission should:

1.    Use the proceeds from forfeitures paid to the Commission by licensees to create a capital pool to be loaned to prospective minority owners in all commercial services.

2.    Use the proceeds from the FCC spectrum auctions, and the interest from auction deposits held by the Commission, to create a capital pool to be loaned to prospective minority owners in all commercial services.

3.    Immediately convene a minority ownership conference and invite the CEO's of the 50 largest radio and television licensees and the 25 largest broadcast financing institutions to hear from a broad panel of minority owners and prospective owners on the kinds of things that can be done to voluntarily facilitate the financing of minority purchasers.

4.    When non-minority station owners request waivers of the Commission's rules, require them to demonstrate what they have done to help promote increased minority ownership.

5. Deny any multiple ownership waiver requests where a sale is promised at a later date, unless the buyer commits to sell to a ~~minority.~~

**IX. CONCLUSION**

NABOB submits that the Commission should adopt the above proposals in order to comply with its statutory obligation to promote minority ownership in the communications industry.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF  
BLACK OWNED BROADCASTERS, INC.**

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